



June 15, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
United States Senate
Washington, D.C. 20510
and
The Honorable Rick Boucher
Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Dingell and Chairman Boucher:

The American Forest & Paper Association (AF&PA) appreciates the opportunity to provide the Committee with input from the U.S. forest products industry on policy approaches pertaining to renewable portfolio standards (RPS). AF&PA is the national trade association of the forest, pulp, paper, paperboard, and wood products industry. The industry accounts for approximately 6 percent of the total U.S. manufacturing output, employs more than a million people, and ranks among the top 10 manufacturing employers in 42 states with an estimated payroll exceeding \$50 billion.

The forest products industry is dependent on a renewable resource for its very existence. We plant and grow trees, and we use recovered paper and timber as raw material to manufacture paper and wood products that are part of our every day lives. From the morning newspaper to the cereal box, to the lumber in construction of our homes, this industry touches nearly every facet of our daily lives.

We also have a unique perspective on energy policy issues because we both produce and consume significant amounts of energy. On the production side, approximately 60 percent of pulp and paper mills' total energy demand is supplied from renewable biomass, such as wood wastes and by-products of the pulping process. We also are leaders in the use of highly efficient co-generation technology. We co-generate electric power both for internal use and for the occasional sale to the power grid. Unlike utility generating capacity, our generation is tied to our manufacturing processes. Although an important cost savings factor for our industry (relative to the substantial

power we purchase from utility generators), generation of electric power is a secondary function to manufacturing forest products and, therefore, subject to operating and economic constraints not shared by utilities.

The remaining 40 percent of our energy consumption must be met through purchased energy (e.g., natural gas, electricity, coal), and, thus, those energy costs are a significant cost driver for our industry. Currently, energy is the third largest manufacturing cost. Any policy structure that results in cost increases for these critical fuel sources will have a negative effect on our competitiveness, since those cost increases have been and will continue to be passed along to those who consume energy. Moreover, because we are subject to intense global competition, we cannot pass increased energy costs along to our customers easily.

In fact, U.S. imports of forest products have grown consistently at a faster rate than American exports, resulting in an ever-widening trade deficit in the sector, which grew to \$19.3 billion in 2006. Much of the growth in forest products imports in the past few years has come from high-emitting competitor countries that have used various tools, including protective tariff and non-tariff barriers, subsidies, and undervalued currencies, to develop export-oriented forest products industries that have exploited the open American market.

Currently U.S. policymakers are contemplating carbon mandates on domestic manufacturing that are unlikely to be matched by many competing countries. This imbalance may only make foreign products even cheaper to produce relative to U.S. goods and further increase our escalating trade imbalance. Furthermore, new capacity growth is now taking place in other countries, where forestry, labor, and environmental practices may not be as responsible as those in the U.S., and where energy costs may be significantly lower. The Committee should be mindful that, unlike other sectors, manufacturing industries such as ours are unable to pass through CO₂ mitigation costs easily to international customers and the adoption of poorly designed greenhouse gas reduction requirements by the U.S. – such RPS – will put U.S. manufacturers at further competitive disadvantage.

Please note, because an underlying objective of an RPS is to reduce greenhouse gas emissions, many of the concerns we raise echo those outlined in our March letter to the Committee about approaches to climate legislation.

1. Purpose of Portfolio Standards Proposals

- a. Do you believe that adopting one of more Federal “portfolio standard” requirements applied to sources of retail electricity, mandating that a given percentage of the power sold at retail come**

from particular sources, is an advisable Federal policy? Why or why not?

The forest products industry does not support a national RPS due to the expected increased costs (stemming from necessary capital investments; for example), utilities would pass along to all classes of customers, including manufacturing facilities, in their capacity as large ratepayers. We also view national renewable standards as a “one size fits all” solution that does not account for state or regional characteristics or economic impacts. A third concern is that national renewable mandates typically discriminate against the renewable energy our industry generates. Under most legislative proposals, renewable power produced at existing forest products facilities does not qualify for renewable energy credits; yet, the same energy generated by utilities will. An RPS that includes only new generation fails to recognize that the forest products industry has invested heavily in renewable energy and continues to spend significant resources in keeping the generation fleet well maintained and reliable. Providing incentives for new entrants and excluding existing generators is fundamentally unfair and creates unnecessary economic distortion. Finally, wood-based biomass fiber has multiple uses. It serves as a primary raw material for manufacturers of paper and wood products, and is also being widely promoted as a substitute for fossil fuels in industrial and transportation uses. It is important that market forces, not government policies, in the form of market distorting mandates, determine the highest economic use for that fiber. For these reasons, we are unable to support a national RPS.

As a general matter, we believe that questions regarding renewable energy policy are best addressed at the state level, as states are in a better position to assess and develop policies based on the specific mix of available energy resources. Nonetheless, we have endeavored to provide information responding to your questions in the hope that we can provide constructive input as the Committee moves ahead with its RPS deliberations.

b. Is it appropriate for Government to impose generation-source conditions or energy savings requirements on load-serving utilities in order to serve public-policy purposes such as promotion of renewable energy production, energy efficiency, and reduction of carbon emissions? Why or why not?

Promotion of renewable energy production, energy efficiency, and reduction of carbon emissions are all laudable goals. The Committee may want to consider voluntary measures and grants or loan guarantees to encourage those objectives. Such voluntary measures include government or private sector funded research, and development and demonstration efforts to make renewable technologies more

competitive with conventional technologies. Focusing on enhancing the competitiveness of renewable energy technologies and energy efficiency will make them a sustainable component of our nation's fuel mix much faster than mandates, which may not be achievable.

We believe the Committee should not impose generation-source conditions on load serving utilities because such policies pick "winners" and "losers" in the energy marketplace. A focus on energy efficiency and non-traditional energy sources through the use of mandates, without considering whether these resources or technologies can be cost effectively obtained as compared to other options for the supply of electric power, can cause enormous economic waste. Furthermore, there are limits to how much energy-efficiency measures and alternative energy sources – some of which remain of speculative economic viability – can contribute to meeting the energy requirements of our nation. However, if the Committee nonetheless adopts an approach that does impose generation-source conditions, Combined Heat and Power (CHP) using non-renewable fuels should be included to the extent that it reduces fossil-fuel usage through its higher efficiency.

Also, we discourage the Committee from imposing energy savings requirements on load serving utilities, as utilities are in the business of selling power and unavoidable conflicts arise when government places utilities in the business of "not selling power." Government attempts to force utilities into this role, presumably because surcharges on customer's electric power bills are the easiest means by which to collect funds for energy efficiency programs, lead to the development of perverse concepts such as revenue decoupling, which undermine traditional ratemaking principles.

Reduced Energy Use

Over the past 30 years, AF&PA members have steadily improved their energy performance. Members have decreased overall energy use (of both fossil fuels and renewable energy) by almost 3 percent between 2000 and 2004. Since 1972, members have reduced the total amount of energy needed to produce a ton of paper by 27 percent, thereby reducing GHG emissions. Members have accomplished this through specific programs dedicated to achieving energy cost savings, and to making better use of the renewable biomass resource that is the raw material of all forest products.

A significant energy accomplishment is our industry's increased use of co-generated electricity; indeed, we are a leader in the production and use of co-generated electricity. Department of Energy (DOE) data from 2002, the most recent information available, show that the paper industry is the second largest producer of co-generated electricity. Specifically, in 2002, 89 percent of electricity generated at paper mills was co-generated.

Industry-Wide Renewable Fuel Use and Decreased Reliance on Fossil-Fuel Use

Pulp and paper mills and wood products production facilities are unique in their utilization of renewable biomass fuel, which has enabled them to reduce their fossil fuel use. Between 2000 and 2004, fossil fuel use was reduced by 11 percent. Pulp and paper mill use of total energy derived from fossil fuel and purchased energy sources has decreased by 52 percent since 1972.

DOE data show that industry facilities produced 89 percent of the biomass-based fuel generated by industrial sectors in 2003. The two largest sources of energy at pulp and paper mills are from renewable biofuels. Over 40 percent of pulp and paper mill energy comes from spent pulping liquors (including the residual lignin content dissolved from wood during the pulping process). An additional 15 percent of pulp and paper mill energy needs are provided by utilization of logging and wood processing byproducts, including bark and other wood residuals. When combined with renewable self-generated hydroelectricity, 60 percent of mills' total energy demand comes from renewable sources. Renewable fuels from wood scraps are the predominant energy source for wood products facilities and supplied 77 percent of those facilities' energy needs in 2004. By necessity, our industry has become highly experienced at sourcing forest residuals. The economics of low-density, bulk transportation typically make forest residuals an exclusively local fuel.

Examples of Steps Taken to Improve Energy Efficiency

Industry members continue to seek additional opportunities for energy efficiency, for example, through participation in DOE's Energy Savings Assessments (ESAs) program. The purpose of ESAs is to identify immediate opportunities to save energy and money by focusing on key energy using systems.

In the first round of assessments, 10 industry facilities were selected to participate in the ESAs program. That participation has resulted in energy efficiency suggestions resulting in individual mill potential savings ranging from \$700,000 to \$9.6 million, for a total potential savings of almost \$38 million. These savings suggestions included changes in capital equipment, as well as operations, and pertained to the key energy using areas in facilities, such as pumps, process heat, steam, and compressed air.

Concerns

These detailed descriptions of energy efficiency and reduced GHG emissions were obtained through implementation by member companies of voluntary measures driven by economic and environmental considerations. Underlying this progress was

the ability of the individual company or mill to undertake the analysis necessary (sometimes with assistance from DOE) to determine which changes would make the most sense for the facility. In many cases, the very apparent economic driver was the rising cost of energy, which demanded the accomplishment of significant energy savings and the attendant reduction in electricity or natural gas bills.

One concern with some energy efficiency portfolio proposals that place the responsibility of energy efficiency gains on utilities is that they incorporate the concept of “revenue decoupling,” an approach at odds with traditional approaches to ratemaking. Under traditional approaches, utilities are not guaranteed a rate of return, but must accept certain business risks. Under decoupling this is no longer the case.

Voluntary programs implemented by end user industrial consumers provide clear incentives to implement energy efficiency measures. Decoupling, however, is intended to remove economic incentives built into ratemaking structures for utilities that work against energy efficiency. The rate design for regulated utilities typically rewards utilities for selling more power, while energy efficiency projects implemented by customers result in decreased power sales. “Revenue decoupling” would break – or “decouple”— the link between the amount of power sold and the revenue (and profit) realized by utilities, thereby supposedly removing the economic incentives against energy efficiency. There are, however, two problems with decoupling theory.

- Under Decoupling, Utilities Are Compensated for Lost Revenue Unrelated to Energy Efficiency: With decoupling, utilities are supposedly compensated for revenue lost when customers’ efficiency projects reduce demand. However, measurement and verification protocols often cannot distinguish between lower sales generated by energy efficiency from other causes. Hence, utilities also are often compensated for reduced power sales due to factors unrelated to efficiency, such as weather that depresses sales or economic downturns .
- Under Decoupling, Industrial Consumers Do not Benefit from Energy Efficiency Improvements: Because it is difficult to track where savings come from, utilities are often simply compensated for lost revenue generally. Industrial consumers, therefore, often lose the financial reward and a primary motivator of efficiency projects — reduced energy bills. For example, if a pulp and paper mill installed more efficient boilers in response to rising fuel prices, it would purchase less power from its utility and should see lower bills . However, because the utility is to be compensated for the lost revenue, that same mill would end up paying a higher rate on a lesser level of purchases under decoupling, thereby totally undermining the motivation for the investment in the energy efficiency project.

For these reasons, we urge the Committee not to include decoupling provisions in any Portfolio Standard or to even include language which would encourage states to consider revenue decoupling. Eight states have established third-party entities whose mission is to promote incentives for energy efficiency for industrial and other power consumers. If the Committee desires a mechanism to promote energy efficiency, it should investigate the programs in these states to learn more about programs that treat all stakeholders fairly and provide incentives – instead of penalties – for all consumers, including industrial users.

c. If you favor such a policy, how would you define its specific purpose?

Energy efficiency measures are viewed as one mechanism to achieve the broader national energy security and GHG reductions goals. In some cases, energy efficiency can be the “low hanging fruit” and a logical and cost effective first step to achieving these goals. However, in other cases, there are other more pressing needs for scarce capital, or more effective ways to achieve GHG reductions or energy security objectives. If the Committee is developing measures to establish a national energy efficiency standard, the Committee should carefully consider and coordinate those measures with other programs intended to achieve the goals of energy security and GHG reductions.

d. If Congress were to adopt an economy-wide policy mandating reductions in emissions of greenhouse gases, including the electricity industry, would such a portfolio standard policy remain necessary or advisable?

It is worth pointing out that implementation of a GHG reduction program simultaneously addresses the objectives and provides the benefits usually attributed to RPS programs by supporters. Should Congress adopt an economy-wide emissions control policy, it should coordinate that program with other GHG reduction measures and endeavor to avoid multiple regulatory schemes with overlapping and potentially inconsistent requirements.

e. What analysis has been done of any portfolio standards requirement you endorse to demonstrate:

- i. Its economic costs to consumer, nationally, and in various regions, in electricity rates?***
- ii. Its benefits in greenhouse gas emission reductions?***

iii. Its implication for electricity reliability, security, and grid management?

iv. Its implications for jobs and economic development?

v. Its implications for utility capital investment?

vi. Other relevant factors?

AF&PA has not undertaken its own analysis of the economic or other implications of any RPS. However, our members have had some experience with RPS programs and their cost effectiveness. In some states, the price for solar renewable energy credits (RECs) is very high and the demand for RECs set by an ambitious RPS has outstripped the eligible supply of renewable energy produced in the state causing prices to rise to the capped alternate compliance rate. Thus, experience indicates RPS mandates can increase electricity costs substantially, and we urge the Committee to recognize the competitiveness implications of increased electricity costs for our industry and the nation as it considers RPS legislation.

AF&PA has undertaken preliminary analysis of the impacts of greenhouse gas reduction measures. Inevitably, imposing a price on carbon will result in higher electricity costs for our industry. It is likely that a national RPS would have a similar effect.

As stated above, energy is the third largest manufacturing cost for the industry. Any policy structure that results in cost increases will have a negative effect on our competitiveness, since those costs have been and will continue to be passed along to energy consumers, such as our industry. Moreover, because we are not insulated from global competition, we cannot easily pass those costs along to our customers.

U.S. capacity to produce paper and paperboard has been declining approximately 1 percent a year since its peak in 2000, while worldwide capacity to produce these products outside of North America has grown at an average annual rate of 3.7 percent a year. The tendency for capacity to be built abroad while U.S. capacity is contracting would only be exacerbated if the cost of energy to U.S. mills were to increase due to an RPS while the cost to competitor nations remained unaffected. Much of this new capacity outside the U.S. is being located in developing nations, such as China, Indonesia, and Brazil.

There is no doubt that a rise in the cost of energy to our industry that is not matched by our overseas competitors would rapidly accelerate the rising trend in imports and job losses that our industry has seen over the past 10 years.

Since early 1997, 136 pulp and paper mills have closed in the U.S., contributing to a loss of 85,000 jobs, or 39 percent of our workforce. An additional 60,000 jobs have been lost in the wood products industry since 1997. Many of these mills are in rural areas and were the major source of employment for the locale. Energy prices were a significant reason for these devastating losses to the U.S. economy.

2. Portfolio Inclusions and Exclusions

a. What is the principle that should determine inclusion or exclusion of any energy source from an adopted portfolio standard? (i.e., excludes all fossil-fired generation, includes all generation that emits no GHG, excludes all generation below given energy-conversion efficiency, etc.)

The nation will incur significant cost increases as we transition to a less carbon intensive economy. The Committee should ensure cost effectiveness is a guiding principle as it debates the choices of energy sources to include in a portfolio standard. An expansive list of qualifying sources would ensure greater supplies of energy sources that achieve the primary goals of reducing GHG emissions and increasing energy security. We believe that this should be an important principle in the Committee's deliberations, as well.

b. What generation sources for retail electricity supplies (including efficiency offsets) should be included and should be excluded from any mandatory portfolio requirement that is adopted? Please provide your reasons for excluding any sources.

As discussed in response to 2.a. above, we would encourage the Committee to consider the economic and other benefits of broad criteria that will allow a greater supply of qualifying materials.

c. To the extent that multiple renewable energy sources and efficiency or other sources are eligible for inclusion, should any tiers among them or separate sub-requirements be adopted?

Although we have not analyzed the impacts of including tiers or sub-requirements in a portfolio standard, it stands to reason that separate tiers for different resources create separate mandates and further differentiates between fuel sources – creating winners and losers within the RPS program. Because tiers can provide unachievable mandates for extremely expensive renewable technologies, such separate mandates are typically not cost effective and should not be considered because compliance can be extremely costly to consumers.

d. Should there be any distinction between existing and new sources of generation eligible for inclusion in the portfolio? If so, what would be the threshold date for eligibility?

An RPS should not distinguish between existing and new sources. To the extent there are existing sources of renewable energy, those sources already are displacing the GHG emissions and fossil fuel use that would otherwise occur if those renewable sources did not exist. For example, approximately 60 percent of pulp and paper mills' total energy demand is supplied from renewable biomass, such as wood wastes and by-products of the pulping process. Absent the use of these renewable resources, our industry's mills would be consuming much more fossil fuel and emitting additional GHGs. The mills' contribution to energy security and GHG emission reductions should be recognized and included in any portfolio adopted.

In addition, it has been suggested that one way to implement an approach that distinguishes between new and existing sources is through a credit trading scheme. Specifically, there would be two kinds of credits — tradable credits for new renewable power and credits that are not tradable for existing renewable power. Creating a class of non-tradable credits will restrict the development of a robust market and renewable power generation. All credits should be tradable. If the market for credits is restricted, the price will necessarily increase and prices will be more volatile, market manipulation will be easier, maintenance of existing investment in renewable generation will be threatened, and investor risk premiums will increase, which in turn will restrict investment in renewable generation.

e. Would the electricity equivalent of useful thermal energy from eligible sources be credited against the requirement? Why or why not?

Useful thermal energy can be an important energy resource, just like solar or wind-based energy. Moreover, to the extent that thermal energy is used productively, it is, in effect, "zero emission" energy. That is because previously the emissions were created, but the energy was not used. If the thermal energy is now captured and used, no new emissions are created, yet more energy is available to be used productively.

f. To the extent energy efficiency is included:

i. How would the required savings be measured and verified?

ii. Against what base consumption period (historic or projected)?

Admittedly, measurement and verification will be a significant challenge when it comes to energy efficiency projects. We are not able to offer specific recommendations

at this time. Some states, such as Pennsylvania, have tackled this issue when they developed the rules for implementation of their alternative energy portfolio standard.

3. Percentage Requirement and Timing

a. What target percentage of total retail power deliveries should achieved by the required portfolio?

The guiding principle of reasonable gradualism should be applied when establishing any target percentage. Such target percentages should be flexible and take into account local resources and characteristics. For example, states should have the flexibility to establish target percentage levels that account for load growth and generation retirements. Otherwise, the requirements could be set so high that they impose unjust and unreasonable compliance costs or result in the development of unneeded generation capacity. We would urge the Committee to craft policies that are supportive of varying state percentages that reflect their unique resources and characteristics.

b. What is the target year for reaching the ultimate mandated portfolio percentage?

In any regulatory program, it is extremely important to allow adequate time for market adaptation and the introduction and implementation of new technology. Since there is a limited amount of existing renewable energy resources currently available, new technology will be critical to achieving RPS goals.

c. Should there be a straight-line, accelerating, or other form of “ramp-up” to the ultimate target percentage?

The Committee should consider on-ramps linked to technology development, economic conditions, and other relevant circumstances.

d. Should there be any “off-ramps” or other built-in automatic changes in requirements as a function of contingencies? If so, what should they be? (e.g., price or cost thresholds, contingencies for natural or climate conditions, lack of adequate transmission, etc.)

Wood-based biomass, a primary raw material for manufacturers of paper and wood products, also may be used as a source of energy to satisfy RPS obligations. The amount of wood-based biomass used in this manner will vary by region, depending on supply and other factors. One possible outcome of this increased wood-based use is potential economic dislocations in some local economies.

AF&PA believes market forces should be the primary stimulant for the use of wood and wood waste as a renewable fuel source and for determining the optimum fuel choices for energy generation. AF&PA believes that governments should avoid providing subsidies that may divert biomass from its most economically productive use. However, in regions where there are underutilized biomass resources and inadequate economic alternatives for the use of biomass, AF&PA supports incentives for the use of biomass as renewable fuel.

To accommodate adaptation to changing market and resource conditions, the Committee should allow for off-ramps for economic dislocation and the impairment of sustainable resource management. The states should be allowed to implement the off ramp conditions by adjusting the schedule of implementation (either percentages or dates or both) if they become aware of any disruptions to local economies resulting from the RPS.

4. Relationship to State Portfolio Standards and Utility Regulation:

a. Should an adopted Federal portfolio standard set:

- i. A minimum standard, allowing States to set or maintain higher targets?**
- ii. A preemptive standard, prohibiting States to set higher or different targets?**
- iii. Merely a mandate for a standard, allowing States to set their own targets at any level?**
- iv. Merely a given percentage target, allowing States to elect generation or efficiency sources eligible to meet it?**
- v. A standard applying only to States without prior portfolio requirements, grandfathering all prior standard programs?**

A national RPS has been controversial partially because it would impose a national mandate on what is inherently a more local issue — the availability and mix of renewable resources. For some states, certain kinds of renewable energy sources are plentiful, while for others such resources are constrained or already being used to a large extent. These variations across states or regions, and their economic impacts, require careful balancing and consideration if an RPS is adopted. Any federal RPS initiative should accommodate these important policy choices made by the states.

It also is important to consider that 26 states plus the District of Columbia have already adopted an RPS, where, at the state level, they accomplished this critical balancing to address their state-specific needs. While there are numerous ways in which one can compare the programs, the most logical might be to examine the percentage requirements and the corresponding years in which they apply. To answer the questions above, one could begin by comparing the state year and percentage requirements with hypothetical federal requirements, such as those set out below:

2010-2012: 3.75 %
2013-2016: 7.5%
2017-2019: 11.25%
2020-2030: 15%

Our analysis indicates that 17 of the 27 states and the District have requirements that are at least as stringent as the federal program for some or all of the years. Most are as stringent as the final program in the last year covered in the state. In addition, other states already have introduced and are considering RPS legislation, so it is likely that in the next few years there will be even more states with RPS requirements, many of which will be as stringent as the federal program.

It is very likely that a significant portion of the states will already have adopted RPS requirements by the time of the compliance date established in a federal RPS.

b. Can and should State regulatory agencies be required to pass through the costs of complying with Federal portfolio standards requirements in retail rates?

Generally, existing law already requires this pass through to occur and the Committee need not add a specific provision mandating pass through of costs.

Rate making bodies should, however, retain their traditional authority to review the decisions of utilities to make sure they have acted prudently in fulfilling their RPS obligations. If they have failed to meet these obligations in a reasonable manner (for instance, paying penalties when they could have developed new resources at a far cheaper cost), they should not be entitled to pass through imprudently incurred costs. In this respect, RPS costs should be no different than any other cost of complying with federal law incurred by a utility.

We urge the Committee to be mindful that manufacturers generally cannot pass through increased energy costs in the price of our products due to intense international competition. Thus, additional RPS compliance costs will only exacerbate the competitiveness challenges faced by our industry.

5. Utility Coverage

a. Should any retail sellers of electricity be exempt from the portfolio requirement? (e.g., municipal utilities, rural cooperatives, utilities selling less than a minimum volume of power, unregulated marketers in States with competitive retail markets, etc.)

We believe that states should make the decision as to which retail sellers of electricity should be exempt from the portfolio requirement. As a general matter, there likely is a diminishing rate of return if the program were to cover relatively small power producers. We suggest that the Committee set a de minimus level of sales below which certain power producers would be excluded. States should also be allowed to decide which utility customers or customer classes should be required to participate in any program and which should be exempt based on consideration of the economic impacts in the region.

b. Should any standard apply to wholesale power markets or sales?

Because wholesale power can change hands several times before the sale to an ultimate consumer, credits should be required based on the volume of retail sales. However, because the Secretary would likely be in charge of determining compliance and assessing penalties at the federal level, it would be appropriate for these charges to be either 1) rolled into FERC jurisdictional tariffs and recovered as part of wholesale rates, or 2) recovered at the state/retail level based on traditional ratemaking principles as discussed above.

c. Should there be any basis for discretionary exemptions of certain States or utilities?

AF&PA believes market forces should be the primary stimulant for the use of wood and wood waste as a renewable fuel source and for determining the optimum fuel choices for energy generation. AF&PA believes that governments should avoid providing subsidies that may divert biomass from its most economically productive use. However, in regions where there are underutilized biomass resources and inadequate economic alternatives for the use of biomass, AF&PA supports incentives for the use of biomass as renewable fuel.

States are best suited to determine the availability of renewable resources and to undertake the political, social, and economic balancing required to implement an RPS. Inherent in that balancing are judgments as to the appropriate extent of coverage of the RPS, and whether certain utilities in the state should be exempt.

As to the question of whether an exemption should be available for a particular state, we believe that it also may be appropriate under certain circumstances. The Committee may want to consider exemptions based on significant economic impacts, impairment of sustainable resource management, or the availability of state programs whose goals are consistent with those of an RPS. We understand that the Committee would want to ensure that the criteria for a state exemption would be rigorous enough that it does not become the “exception that swallows the rule,” and we support provisions to accomplish that objective.

6. Administration and Enforcement

a. Should a Federal Government entity enforce the requirement and decide on any exemptions?

i. If so, which one? (e.g., the Environmental Protection Agency? The Department of Energy? The Federal Energy Regulatory Commission? A newly created office or entity?)

ii. If not, should enforcement be delegated to the States or to regional transmission or electric-system-operation entities?

AF&PA believes that it is best left to the states to establish an RPS that fits the states' resources, as well as any exemptions. Nonetheless, if the Committee were to adopt a national RPS, the Committee might also want to provide for a federal entity charged with enforcing its provisions. While we are not in a position to recommend a particular agency at this time, it is apparent that the agency will need staff who are well-versed in electricity sales and regulation, as well as general energy policy matters. Of the agencies suggested above, EPA has the least experience in this arena while the DOE or the FERC would seem to be more reasonable choices.

b. How should Federal and State enforcement be coordinated in States with their own portfolio requirements?

There does not appear to be any benefit in having multiple layers of enforcement resources committed to ensuring compliance with RPS mandates. We expect that state legislatures that have adopted RPS programs also have adopted enforcement provisions and identified state agencies charged with enforcement.

c. What penalties should apply for failure of utilities to meet the percentage mandate?

This is a question best left up to state legislatures that are familiar with state enforcement policies and the difficulty of meeting the RPS mandates for the state. Associated with this issue is what should be done with the money which is collected from entities that elect to pay the alternative compliance payment rather than develop the renewable technology or purchase the credit. We believe the moneys collected by the states in this fashion should be primarily used by the states to further the development of energy efficiency measures and alternative energy technologies.

7. Credits and Trading

a. Should tradable credits for qualifying generation be utilized as the mechanism for establishing compliance?

A properly constructed trading program can be a cost-effective implementation mechanism to achieve RPS goals.

b. Should credit trading be permitted or required on a national basis in order to achieve least-cost compliance with the portfolio standards?

While we believe that an RPS is best implemented at a state level, if a national trading program could be constructed to allow trading among the various states, it could be a very important mechanism to help ensure cost-effective compliance with RPS requirements.

c. Should there be a cap on credit values to limit costs?

It is clear that, even with the best of intentions, the market for credits may become constrained and the cost of credits driven to levels which reward speculators but do not necessarily support needed new generation. The Committee should consider setting a reasonable upper limit on the cost of credits or establishing an alternative compliance payment which retail suppliers can pay in lieu of acquiring the requisite amount of compliance credits.

d. As between a utility purchaser and a qualifying power generator, to whom should the portfolio standard credits be initially allocated?

The Committee need not mandate any allocation, but should leave this to the contractual arrangements of the parties. Any standard will upset a host of already determined contractual arrangements, court decisions, FERC precedents, and state

commission rulings. Many contracts already contain bargained-for designations of which party gets environmental or "green" credits from facilities; awarding them to the other party would severely disturb those arrangements and raise significant legal issues. Moreover, some state programs specify one or another party is entitled to "green" credits and a national requirement that one party should get the credits would, therefore, result in jurisdictional conflicts. However, absent any such contractual designation of which party is entitled to the green attribute or state-specific determination of this specific issue, the credit should remain by default with the producer of the renewable electricity.

e. What relationship, if any, should portfolio standard credits have to other State and Federal credit trading programs for SO₂, greenhouse gases, or biofuels?

We support consistent and harmonized requirements across the various trading programs intended to accomplish national environmental objectives.

f. What requirements, if any, would there be concerning the length of contracts for qualifying generation and ownership of credit rights?

Again, this question is best left up to the states to address.

In conclusion, we believe that renewable energy policy is best addressed at the state level where local resources and economic conditions can be considered. AF&PA cannot support a federal standard that results in increased energy costs, fails to recognize the renewable power generated by the forest products industry, and prevents market forces from determining the highest economic use for wood fiber.

Thank you for the opportunity to provide our thoughts on this important issue.

Best Regards,

Donna A. Harman
Acting President and Chief Executive Officer

cc: The Honorable Joe Barton
The Honorable J. Dennis Hastert